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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,614	04/22/2004	Paul L. Falkenstein	NC 96,039	7320
26384 7590 06/25/2009 NAVAL RESEARCH LABORATORY ASSOCIATE COUNSEL (PATENTS) CODE 1008.2 4555 OVERLOOK AVENUE, S.W. WASHINGTON, DC 20375-5320				
EXAMINER				
DEIGHAN, QUEENIE S				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
06/25/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: PAUL L. FALKENSTEIN and BRIAN JUSTUS

Application 10/829,614
Technology Center 1700

Mailed: June 25, 2009

Before ERIC W. HAWTHORNE, *Supervisory Paralegal Specialist*
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 29, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed December 3, 2007 is deficient because the "Evidence Relied Upon" section fails to include the reference(s) Fekety (US 6,917,741), Large et al. (US Pub. No. 2005/0147366), Fajardo (US 6,847,771), and Sato (US 7,026,025) cited on page 3 in the Examiner's Answer's grounds of rejection of 19, 21-22, 24, 27, 28, 30, and 32-33 under 35 USC § 103(a).

The above claims are identified by the Examiner as not being withdrawn, but not under review on appeal because they have not been presented for review in the appellant's brief. The Examiner's designation of those rejected claims does not remove them from consideration on appeal, and thus must be properly documented in accordance with MPEP §1207.02.

Appropriate correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) to issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 2) such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWH/cdc

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